

REMARKS

In an Office Action dated January 28, 2008, the Examiner has maintained the objection to the specification as failing to provide proper antecedent basis. The Examiner also rejected Claims 1-3, 5-10, 13, 15-16, 20-21, 23-26 and 28-29 under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2002/0112044 to Hessmer et al. (“Hessmer”) in view of U.S. Publication No. 2004/0019639 to E et al. (“E”), further in view of U.S. Publication No. 2002/0091819 to Melchione et al. (“Melchione”). The Examiner has rejected Claim 11 under 35 U.S.C. §103(a) as being unpatentable over Hessmer, E and Melchione as applied to claim 10, and further in view of U.S. Publication No. 2001/0005201 to Digiorgio. The Examiner has rejected Claim 12 under 35 U.S.C. §103(a) as being unpatentable over Hessmer, E and Melchione as applied to Claim 10, further in view of U.S. Patent No. 6,061,721 to Ishmael (“Ishmael”).

In this response, and without admitting the propriety of the rejections, Applicants have amended independent Claims 1, 10, 20 and 25. Applicants submit that the amendments are supported in the application as filed, and no new matter has been added. Claims 1-3, 5-9, 10-13, 15-16, 20-21, 23-24, 25-26 and 28-29 remain pending.

OBJECTION TO THE SPECIFICATION

The specification was objected to as failing to provide proper antecedent basis for the subject matter of Claim 25. Without admitting the propriety of the objection, Paragraph [0080] of the specification was amended in accordance with the Examiner’s suggestion to recite “computer-readable medium” instead of “system-readable medium.” Accordingly, Applicant requests that the Examiner withdraw the objection.

CLAIM REJECTIONS – 35 U.S.C. § 103

Although the Examiner has withdrawn the previous rejection of Claims 1-3, 5-10, 13, 15-16, 20-21, 23-26 and 28-29 under 35 U.S.C. §102(b) as being anticipated by the previously cited reference to Melchione, the Examiner has now rejected those claims under 35 U.S.C. §103(a) as being unpatentable over the newly cited reference to Hessmer in view of the newly cited reference to E, and further in view of the previously cited reference to Melchione. Applicant traverses the rejections. Nevertheless, in order to advance the prosecution of the application as quickly as possible, and without admitting the propriety of the rejection, Applicant has amended the independent Claims 1, 10, 20 and 25 to clarify the subject matter that Applicant regards as the invention. Support for the amendments is found throughout the specification and drawings, in particular Figure 13 and the accompanying description in paragraphs [0083] – [0089].

Hessmer discloses agents located on remote data access servers to enumerate the data access servers running on each remote node in a network, and to thereafter connect to the data access servers for purposes of extracting diagnostic data for the data access server. (Hesser, [0024]). A graphical user interface to the agents presents the remote nodes, data access servers and the available diagnostic data in the form of a hierarchical structure view [0056]. Central to the Examiner's rejection under Section 103 is the assertion that the network of remote nodes in which the data access servers operate discloses a network having a cluster architecture. Applicants disagree.

There is nothing in the disclosure of Hessmer that suggests that the data access servers and the remote nodes in which they operate are architected as a cluster of

application server instances as described in the specification and recited in the claims of the present application. Moreover, the Examiner's criticism that Applicants' specification does not provide "an explicit definition" or "a limiting definition" of the term "cluster architecture" is not warranted. (Office Action , Page 4). The meaning of a particular claim term *may be defined by implication, that is, according to the usage of the term in the context of the specification*. See Phillips v. AWH Corp., 415 F.3d 1303<, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc) quoted in MPEP 2111.01 (IV). Applicants' specification provides ample description of the cluster architecture in Figure 13 and the accompanying paragraphs [0083-0089]. Accordingly, the claim limitations, including the term "cluster," must be interpreted in light of the specification. Applicant submits that the disclosure of the remote nodes and data access servers in Hessmer do not, therefore, meet the limitations of the cluster of application servers as recited in the claims. For at least this reason, Applicants respectfully request the withdrawal of the rejection under Section 103.

In any event, in order to advance the prosecution of the application as quickly as possible, Applicant has further amended the claims to clarify the cluster of application servers recited in the claims, and submits that Claim 1 is patentably distinguishable over Melchione, Hessmer and E, either alone or in combination. Independent claims 10, 20 and 25 recite similar limitations. Claims 2-3, 5-9, 11-13, 15-16, 21, 23-24, 26 and 28-29 depend from claims 1, 10, 20 and 25, respectively. Thus, for at least the same reasons that Claim 1 is patentably distinguishable over Melchione, Hessmer and E, either alone or in combination, Applicant submits that independent Claims 10, 20 and 25, as well as

dependent Claims 2-3, 5-9, 11-13, 15-16, 21, 23-24, 26 and 28-29 are also patentably distinguishable over Melchione, Hessmer and E, either alone or in combination.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, Claims 1-3, 5-9, 10-13, 15-16, 20-21, 23-24, 25-26 and 28-29 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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